

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (49 C.F.R. PART 26)**

**UTAH DEPARTMENT OF TRANSPORTATION**

**UNIFORM CERTIFICATION APPLICATION**

**RETURN COMPLETED APPLICATION TO:**

**UTAH DEPARTMENT OF TRANSPORTATION**

**CIVIL RIGHTS SECTION**

**4501 SOUTH 2700 WEST – 4<sup>TH</sup> FLOOR**

**Box 141520**

**SALT LAKE CITY, UT 84114-1520**

## ROADMAP FOR APPLICANTS

### À Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

Ð If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

### Á Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

Â Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

### Ã Where can I find more information?

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indextableofsize.html> (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

## Section 1: CERTIFICATION INFORMATION

### A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<b>p DBE</b>	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<b>p</b> Yes, on ___/___/___ State: _____ <b>p</b> No
	<b>p 8(a)</b>	A <b>STOP!</b> If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
	<b>p SDB</b>	

### B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <b>p</b> Yes, on ___/___/___ <b>p</b> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:	
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## Section 2: GENERAL INFORMATION

### A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:	
(3) Phone #:	(4) Other Phone #:	(5) Fax #:	
(6) E-mail:	(7) Website <i>(if have one)</i> :		
(8) Street address of firm <i>(No P.O. Box)</i> :	City:	County/Parish:	State:      Zip:
(9) Mailing address of firm <i>(if different)</i> :	City:	County/Parish:	State:      Zip:

### B. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID (if any):
(3) This firm was established on ___/___/___	(4) I/We have owned this firm since: ___/___/___
(5) Method of acquisition <i>(check all that apply)</i> : <b>p</b> Started new business <b>p</b> Bought existing business <b>p</b> Inherited business <b>p</b> Secured concession <b>p</b> Merger or consolidation <b>p</b> Other <i>(explain)</i> _____	
(6) Is your firm "for profit"? <b>p</b> Yes <b>p</b> No	A <b>STOP!</b> If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm ( <i>check all that apply</i> ): <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe: _____											
(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain: _____											
(9) Number of employees: Full-time _____ Part-time _____ Total _____											
(10) Specify the gross receipts of the firm for the last 3 years: <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Year _____</td> <td style="width: 33%;">Total receipts \$ _____</td> <td style="width: 33%;"></td> </tr> <tr> <td>Year _____</td> <td>Total receipts \$ _____</td> <td></td> </tr> <tr> <td>Year _____</td> <td>Total receipts \$ _____</td> <td></td> </tr> </table>			Year _____	Total receipts \$ _____		Year _____	Total receipts \$ _____		Year _____	Total receipts \$ _____	
Year _____	Total receipts \$ _____										
Year _____	Total receipts \$ _____										
Year _____	Total receipts \$ _____										

### C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities: _____														
(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No														
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each ( <i>attach extra sheets, if needed</i> ): <table style="width: 100%; border: none; margin-top: 10px;"> <tr> <th style="width: 33%; text-align: left;"><u>Name</u></th> <th style="width: 33%; text-align: left;"><u>Address</u></th> <th style="width: 33%; text-align: left;"><u>Type of Business</u></th> </tr> <tr> <td>1. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>2. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>3. _____</td> <td>_____</td> <td>_____</td> </tr> </table>			<u>Name</u>	<u>Address</u>	<u>Type of Business</u>	1. _____	_____	_____	2. _____	_____	_____	3. _____	_____	_____
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>												
1. _____	_____	_____												
2. _____	_____	_____												
3. _____	_____	_____												

### D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then list ( <i>attach extra sheets, if needed</i> ):				
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____

### Section 3: OWNERSHIP

**Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below** *(If more than one owner, attach separate sheets for each additional owner):*

#### A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address <i>(street and number)</i> : _____ City: _____ State: _____ Zip: _____		
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership <i>(Check all that apply)</i> : <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other <i>(specify)</i> _____	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

#### B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm: <table style="width: 100%; border: none;"> <tr> <th style="text-align: left;"><u>Type</u></th> <th style="text-align: left;"><u>Dollar Value</u></th> </tr> <tr> <td>Cash</td> <td>\$ _____</td> </tr> <tr> <td>Real Estate</td> <td>\$ _____</td> </tr> <tr> <td>Equipment</td> <td>\$ _____</td> </tr> <tr> <td>Other</td> <td>\$ _____</td> </tr> </table>	<u>Type</u>	<u>Dollar Value</u>	Cash	\$ _____	Real Estate	\$ _____	Equipment	\$ _____	Other	\$ _____
<u>Type</u>		<u>Dollar Value</u>									
Cash		\$ _____									
Real Estate	\$ _____										
Equipment	\$ _____										
Other	\$ _____										
(3) Percentage owned:											
(4) Familial relationship to other owners:											
(5) Shares of Stock: <table style="width: 100%; border: none;"> <tr> <th style="text-align: left;"><u>Number</u></th> <th style="text-align: left;"><u>Percentage</u></th> <th style="text-align: left;"><u>Class</u></th> <th style="text-align: left;"><u>Date acquired</u></th> <th style="text-align: left;"><u>Method Acquired</u></th> </tr> <tr> <td colspan="5" style="height: 40px;"></td> </tr> </table>		<u>Number</u>	<u>Percentage</u>	<u>Class</u>	<u>Date acquired</u>	<u>Method Acquired</u>					
<u>Number</u>	<u>Percentage</u>	<u>Class</u>	<u>Date acquired</u>	<u>Method Acquired</u>							
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____											
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm <i>(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____ Nature of Business Relationship: _____											

#### C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)</i>
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain <i>(attach additional sheets if needed)</i> :

## Section 4: CONTROL

**A. Identify your firm's Officers & Board of Directors** *(If additional space is required, attach a separate sheet):*

	Name	Title	Date Appointed	Ethnicity	Gender
<b>(1) Officers of the Company</b>	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
<b>(2) Board of Directors</b>	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? **p** Yes **p** No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_

Business: \_\_\_\_\_ Function: \_\_\_\_\_

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? **p** Yes **p** No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_

Nature of Business Relationship:

**B. Identify your firm's management personnel who control your firm in the following areas** *(If more than two persons, attach a separate sheet):*

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? **p** Yes **p** No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_

Business: \_\_\_\_\_ Function: \_\_\_\_\_

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?

**p** Yes **p** No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_

Nature of Business Relationship: \_\_\_\_\_

**C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):**

**(1) Equipment**

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(2) Vehicles**

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(3) Office Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**(4) Storage Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**D. Does your firm rely on any other firm for management functions or employee payroll? **p** Yes **p** No**

If Yes, explain:

**E. Financial Information****(1) Banking Information:**

(a) Name of bank: \_\_\_\_\_ (b) Phone No: (    ) \_\_\_\_\_  
 (c) Address of bank: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**(2) Bonding Information:** If you have bonding capacity, identify:

(a) Binder No: \_\_\_\_\_  
 (b) Name of agent/broker \_\_\_\_\_ (c) Phone No: (    ) \_\_\_\_\_  
 (d) Address of agent/broker: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 (e) Bonding limit: Aggregate limit \$ \_\_\_\_\_ Project limit \$ \_\_\_\_\_

**F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:**

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

**G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):**

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

**H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed):**

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

**I. List the three largest contracts completed by your firm in the past three years, if any:**

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

**J. List the three largest active jobs on which your firm is currently working:**

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					



		<b>Personal Net Worth Statement</b>				7/15/03	
<b>1. Name:</b>						<b>Date</b> _____, _____	
Complete this form for: (1) each proprietor, or (2) each limited partner, each general partner, (3) each stockholder , or (4) any person(s) or entities upon which the disadvantaged status is dependant upon..							
Business Name							
Disadvantaged Owner's Name					Business Phone		
Residence Address					Residence Phone		
City, State & Zip Code							
<b>ASSETS</b>				<b>LIABILITIES</b>			
Cash on hand & in Banks	\$			Accounts Payable	\$		
Savings Account	\$			Notes Payable to Banks and Others	\$		
IRA or Other Retirement Account	\$			(Describe in Section 2)			
Accounts & Notes Receivable	\$			Installment Account (Auto)	\$		
Life Insurance-Cash Surrender Value Only	\$			Mo. Payments	\$		
(Complete Section 8)				Installment Account ( Other)	\$		
Stocks and Bonds (Including Corporate Stock)	\$			Mo. Payments	\$		
(Describe in Section 3a or 3b)				Loan on Life Insurance	\$		
Real Estate	\$			Mortgages on Real Estate	\$		
(Describe in Section 4)				(Describe in Section 4)			
Automobile-Present Value	\$			Unpaid Taxes	\$		
Other Personal Property	\$			(Describe in Section 6)			
(Describe in Section 5)				Other Liabilities	\$		
Other Assets	\$			(Describe in Section 7)			
(Describe in Section 5)	\$						
<b>Total Assets</b>	\$			<b>Total Liabilities</b>	\$		
				<b>Total Net Worth =</b> <b>(Assets minus Liabilities)</b>	\$		
				<b>Deductions :</b>			
				- Equity in Primary Residence	\$		
				- Equity in Applicant firm	\$		
				<u>Personal Net Worth</u>	\$		
<b>Section 1. Source of Income</b>				<b>Contingent Liabilities</b>			
Salary	\$			As Endorser or Co-Maker	\$		
Net Investment Income	\$			Legal Claims & Judgments	\$		
Real Estate Income	\$			Provisions for Federal Income Tax	\$		
Other Income (Describe below)*	\$			Other Special Debt	\$		
Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part t and signed.)							
<b>Name and Address of Note holder(s)</b>			<b>Original ce</b>	<b>Current ce</b>	<b>Payment nt</b>	<b>Frequency , etc.)</b>	<b>How Secured or Type of Collateral</b>

Section 3a. Stocks and Bonds (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).						
Number of Shares	Name of Securities	Cost	Market Value Quotations/Exchange	Date of Quotation/Exchange	Total Value	
Section 3b. Corporate Stock or Ownership Value in Company (List value of stock or Ownership value in company)						
Section 4. Real Estate Owned		(List each parcel separately. Use attachment if necessary. Each attachment must be identified as part of this statement and signed.)				
		Property A	Property B	Property C		
Type of Property						
Address						
Date purchased						
Original Cost						
Present Market Value						
Name & Address of Mortgage Holder						
Mortgage Account Number						
Mortgage Balance						
Amount of Payment per Month/Year						
Status of Mortgage						
Section 5. Other Personal Property and Other Assets			(Describe, and if any is pledges as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)			
Section 6. Unpaid Taxes.		(Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)				
Section 7. Other Liabilities.		(Describe in Detail.)				
Section 8. Life Insurance Held.		(Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)				
I authorize UDOT to make inquiries as necessary to verify the accuracy of the statements made. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of verifying Economic Disadvantage or obtain certification as a Disadvantaged Enterprise. I understand FALSE statements may result in possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).						
Signature:		Date:		SSN Number:		
Signature:		Date:		SSN Number:		

## **AFFIDAVIT OF CERTIFICATION**

*This form must be signed and notarized for each owner upon which disadvantaged status is relied.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PEALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed), swear or affirm under penalty of law that I am \_\_\_\_\_ (title) of applicant firm \_\_\_\_\_ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female                      Black American                      Hispanic American                      Native American  
Asian-Pacific American                      Subcontinent Asian American                      Other (specify) \_\_\_\_\_.

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities. I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare, under penalty of perjury, that the information provided in this application and supporting documents is true and correct.

Executed on: \_\_\_\_\_  
(Date)

Signature: \_\_\_\_\_

**NOTARY CERTIFICATE:**

**DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST**

**In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.**

**All Applicants**

- p Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- p Personal Financial Statement (form available with this application)
- p Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- p Your firm's tax returns (gross receipts) and all related schedules for the past three years
- p Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- p Your firm's signed loan agreements, security agreements, and bonding forms
- p Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- p List of equipment leased and signed lease agreements
- p List of construction equipment and/or vehicles owned and titles/proof of ownership
- p Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- p Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- p All relevant licenses, license renewal forms, permits, and haul authority forms
- p DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- p Bank authorization and signatory cards
- p Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- p Trust agreements held by any owner claiming disadvantaged status, if any

**Partnership or Joint Venture**

- p Original and any amended Partnership or Joint Venture Agreements

**Corporation or LLC**

- p Official Articles of Incorporation (*signed by the state official*)
- p Both sides of all corporate stock certificates and your firm's stock transfer ledger
- p Shareholders' Agreement
- p Minutes of all stockholders and board of directors meetings
- p Corporate by-laws and any amendments
- p Corporate bank resolution and bank signature cards
- p Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

**Trucking Company**

- p Documented proof of ownership of the company
- p Insurance agreements for each truck owned or operated by your firm
- p Title(s) and registration certificate(s) for each truck owned or operated by your firm
- p List of U.S. DOT numbers for each truck owned or operated by your firm

**Regular Dealer**

- p Proof of warehouse ownership or lease
- p List of product lines carried
- p List of distribution equipment owned and/or leased

**NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.**

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE  
(DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION**

**NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.**

**Section 1: CERTIFICATION INFORMATION**

**A. Prior/Other Certifications**

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

**NOTE:** If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

**B. Prior/Other Applications and Privileges**

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

**Section 2: GENERAL INFORMATION**

**A. Contact Information**

- (A) State the name and title of the person who will serve as your firm's primary contact under this application.
- (B) State the legal name of your firm, as indicated in your firm's Articles of Incorporation.
- (C) Indicate the primary phone number of your firm.
- (D) Indicate a secondary phone number, if any.
- (E) Indicate your firm's fax number, if any.
- (F) Indicate your firm's or your contact person's email address.
- (G) Indicate your firm's website address, if any.
- (H) State the street address of your firm (i.e. the physical location of its offices -- not a post office box address).
- (I) State the mailing address of your firm, if it is different from your firm's street address.

**B. Business Profile**

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) Give the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) Give the date on which your firm was officially established, as stated in your firm's Articles of Incorporation.
- (4) Give the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit."  
**NOTE:** If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.
- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

**C. Relationships with Other Businesses**

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any

equipment, or any office staff with any other business, organization, or entity of any kind. If you answered “Yes,” then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
  - (a) your firm has been a subsidiary of any other firm;
  - (b) your firm consisted of a partnership in which one or more of the partners are other firms;
  - (c) your firm has owned any percentage of any other firm; and
  - (d) your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.
- (4) If you answered “Yes” to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

**D. Immediate Family Member Businesses**

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An “immediate family member” is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered “Yes,” provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

**Section 3: OWNERSHIP**

**Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):**

**A. Background Information**

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner’s gender.
- (6) Check the appropriate box that indicates this owner’s ethnicity (check all that apply). If you checked “Other,” specify this owner’s ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program’s other qualifying requirements.

**B. Ownership Interest**

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner’s initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked “Yes,” state the name of the other business and this owner’s title or function held in that business.
- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked “Yes,” identify the name of the other business and this owner’s title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

**C. Disadvantaged Status**

**NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e. for each owner who is claiming to be “socially and economically disadvantaged” and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)**

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner’s PNW.

- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

#### **Section 4: CONTROL**

##### **A. Identify your firm's Officers and Board of Directors:**

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

##### **B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:**

- (1) Making of financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.

##### **C. Indicate your firm's inventory in the following categories:**

###### **A. Equipment**

State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.

###### **B. Vehicles**

State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.

###### **C. Office Space**

State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.

###### **D. Storage Space**

State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.

##### **D. Does your firm rely on any other firm for management functions or employee payroll?**

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

**E. Financial Information**

**(1) Banking Information**

- (a) State the name of your firm's bank.
- (b) Give the main phone number of your firm's bank branch.
- (c) Give the address of your firm's bank branch.

**(2) Bonding Information**

- (a) State your firm's Binder Number.
- (b) State the name of your firm's bond agent and/or broker.
- (c) Give your agent's/broker's phone number.
- (d) Give your agent's/broker's address.
- (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

**F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**

State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

**G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

**H. List current licenses/permits held by any owner or employee of your firm.**

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

**I. List the three largest contracts completed by your firm in the past three years, if any.**

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

**J. List the three largest active jobs on which your firm is currently working.**

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

**AFFIDAVIT & SIGNATURE**

Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.



# Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

Applicable certification information taken from Code of Federal Regulations (CFR) 49, Part 26

## SUBPART A – GENERAL

### §26.1 - What are the objectives of this part?

#### SUBPART A – GENERAL

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

### §26.3 To whom does this part apply?

- (a) If you are a recipient of any of the following types of funds, this part applies to you:
  - (1) Federally-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA -21), Pub. L. 105-178, 112 Stat. 107.
  - (2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA -21, Pub. L. 105-178.
  - (3) Airport funds authorized by 49 U.S.C. 47101, et seq.
- (b) [Reserved]
- (c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.
- (d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

### §26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
  - (i) One concern controls or has the power to control the other; or
  - (ii) A third party or parties controls or has the power to control both; or
  - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.
- Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktila Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.
- Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.). "Compliance" means that a recipient has correctly implemented the requirements of this part.
- Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.
- Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.
- Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

- Disadvantaged business enterprise or DBE means a for-profit small business concern --
  - (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
  - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
- Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
- Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.
- Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.
- Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.
- Noncompliance means that a recipient has not correctly implemented the requirements of this part.
- Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
- Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
- Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).
- Primary recipient means a recipient which DOT financial assistance and passes some or all of it on to another recipient.
- Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.
- Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.
- Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.
- Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.
- Secretary means the Secretary of Transportation or his/her designee.
- Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
- Small Business Administration or SBA means the United States Small Business Administration.

- Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
  - Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --
    - (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
    - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
      - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
      - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
      - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
      - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
      - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
      - (vi) Women;
      - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
  - Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.
- "You," refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

## SUBPART D - CERTIFICATION STANDARDS

### **§26.61 How are burdens of proof allocated in the certification process?**

- (a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.
- (b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.
- (c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means that they do not have the burden of proving to you that they are socially and economically disadvantaged. However, applicants have the obligation to provide you information concerning their economic disadvantage (see §26.67).
- (d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)
- (e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

### **§26.63 What rules govern group membership determinations?**

- (a) If you have reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, you must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.
- (b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.
  - (1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.
  - (2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

#### **§26.65 What rules govern business size determinations?**

- (a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$16.6 million. The Secretary adjusts this amount for inflation from time to time.

#### **§26.67 What rules determine social and economic disadvantage?**

- (a) Presumption of disadvantage.
  - (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
  - (2)
    - (i) You must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.
    - (ii) In determining net worth, you must exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's net worth. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.
- (b) Rebuttal of presumption of disadvantage.
  - (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.
  - (2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.
  - (3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.
  - (4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.
- (c) 8(a) and SDB Firms. If a firm applying for certification has a current, valid certification from or recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm's self-certification as an SDB), you may accept the firm's 8(a) or SDB certification in lieu of conducting your own certification proceeding, just as you may accept the certification of another DOT recipient for this purpose. You are not required to do so, however.
- (d) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the

guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

**§26.69 What rules govern determinations of ownership?**

- (a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.
- (b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
  - (1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
  - (2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
  - (3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
- (c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if -
  - (1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
  - (2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- (e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
  - (1) The owner's expertise must be --
    - (i) In a specialized field;
    - (ii) Of outstanding quality;
    - (iii) In areas critical to the firm's operations;
    - (iv) Indispensable to the firm's potential success;
    - (v) Specific to the type of work the firm performs; and
    - (vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  - (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual --
  - (1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  - (2) Through inheritance, or otherwise because of the death of the former owner.
- (h) (1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is --
  - (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
  - (ii) Involved in the same or a similar line of business; or
  - (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
- (2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that --
  - (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(iii) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because --

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

#### **§26.71 What rules govern determinations concerning control?**

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i) (1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k) (1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners -- as distinct from the family as a whole -- control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(i) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(ii) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(iii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such

equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

#### **§26.73 What are other rules affecting certification?**

(a) (1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm -- even a DBE firm -- cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

EXAMPLE 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

EXAMPLE 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

EXAMPLE 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.



EXAMPLE 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

EXAMPLE 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

EXAMPLE 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
- (g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.
- (h) A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

## SUBPART E - CERTIFICATION PROCEDURES

### §26.81 What are the requirements for Unified Certification Programs?

- (a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).
  - (1) Within three years of [insert date 30 days after date of publication in Federal Register], you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.
  - (2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.
  - (3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.
  - (4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.
  - (5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.
- (b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.
  - (1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.
  - (2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
  - (3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.
- (c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
- (d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- (e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

- (f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.
- (g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.
- (h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

**§26.83 What procedures do recipients follow in making certification decisions?**

- (a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.
- (b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.
- (c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:
  - (1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
  - (2) If the firm is a corporation, analyze the ownership of stock in the firm;
  - (3) Analyze the bonding and financial capacity of the firm;
  - (4) Determine the work history of the firm, including contracts it has received and work it has completed;
  - (5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
  - (6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
  - (7) Require potential DBEs to complete and submit an appropriate application form.
    - (i) Uniform form [reserved]
    - (ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
    - (iii) You must review all information on the form prior to making a decision about the eligibility of the firm.
- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.
- (e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:
  - (1) Certify the firm in reliance on the certification decision of the other recipient;
  - (2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or
  - (3) Require the applicant to go through your application process without regard to the action of the other recipient.
- (f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
- (g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
- (h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of §26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.
- (i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.
  - (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
  - (2) You must attach supporting documentation describing in detail the nature of such changes.
  - (3) The notice must take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the

United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.